



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Military Newspapers of Virginia

File: B-249381.2

Date: January 5, 1993

William L. Walsh, Jr., Esq., J. Scott Hommer, III, Esq., and Wm. Craig Dubishar, Esq., Venable, Baetjer and Howard, for the protester.

Thomas P. Barletta, Esq., and Clifford E. Greenblatt, Esq., Steptoe & Johnson, for Commonwealth Printing Company, an interested party.

Mark S. Utecht, Esq., Department of the Navy, for the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of source selection in procurement not involving appropriated funds is denied where the record contains adequate documentation of the agency's evaluation of proposals and that documentation indicates that the source selection process was reasonable.

2. Agency properly determined that awardee's proposal satisfied a mandatory solicitation requirement where the solicitation, reasonably interpreted, provided the flexibility to use the awardee's proposed alternative with respect to the specification at issue.

DECISION

Military Newspapers of Virginia (MNV) protests the award by the Department of the Navy, under an unnumbered request for proposals (RFP), of a contract to Commonwealth Printing Company (CPC) for publication of a weekly civilian enterprise newspaper. MNV contends that the agency failed to adequately document its evaluation and source selection, deviated from the evaluation criteria set forth in the RFP, and awarded the contract on the basis of a proposal which did not conform to a mandatory RFP requirement.

We deny the protest.

The Norfolk Naval Base public affairs office issued the RFP, dated January 15, 1992, seeking a publisher for a weekly civilian enterprise newspaper to provide news and naval command information to personnel of the Norfolk Naval Base and surrounding naval activities. The contractor will not be paid by the government; instead, the contractor is apparently expected to recoup its costs and make any profit through sales of advertising in the newspaper.

The RFP, which was synopsisized in the Commerce Business Daily, sets forth a series of requirements, including the following item relevant to the protest:

"III. The Publisher shall:

"F. Publish each issue of the newspaper in oversize tabloid size (six nine-pica columns by 14 column inches deep). Four 14-pica-wide column format on front page is preferred. Five 11-pica-wide column format is acceptable on other pages. Other formats will be considered."

The RFP evaluation criteria include the following factors, in descending order of importance: management plan, technical plan, and corporate experience. The management plan comprises four elements: the principal features of the government's requirements, as understood by the offeror; personnel; clerical support services; and coordination arrangements with the agency. The technical plan is to include detailed information in eight technical areas including, among others, the number of color pages per issue and the quality of paper stock.

Five companies, including MNV and CPC, submitted proposals by the May 1, 1992, deadline for submission of offers. The agency's evaluators reviewed the proposals, assigned scores to each element of the proposals, and wrote narrative summary evaluations. Both the scores and the narratives (referred to as "briefing sheets") were structured to follow the RFP's evaluation criteria, including the elements within each criterion. In addition, in accordance with the Navy regulation applicable to procurement of publication services for civilian enterprise newspapers, the agency conducted onsite inspections of relevant facilities.

The selection group established for the procurement convened on June 1, 1992, to review the evaluation results. The conclusion of that meeting was a unanimous recommendation that award be made to CPC. The selection group then met

with the Commander (the source selection official) and Deputy Commander of the Norfolk Navy Base on June 4 for the final selection decision. At the conclusion of that meeting, which included review of the proposals and a briefing concerning the strengths and weaknesses of each, the Commander selected CPC for award of a contract, which was to be effective August 21, 1992. The unsuccessful offerors were notified of the award to CPC on June 5, 1992.

Shortly thereafter, MNV submitted a Freedom of Information Act (FOIA) request, which included the following language: "It is requested that the particulars of why this award to [CPC] is considered by Commander Naval Base, Norfolk, to be most advantageous to the government be delineated with specifics." The Navy's response to this request stated: "A thorough search of our files has disclosed no document responsive to the parameters of your request"

MNV raises a number of allegations related to the source selection process. It contends that the Navy's response to the FOIA request demonstrates, and the record confirms, that the agency failed to adequately document its selection of CPC for award. MNV also claims that the agency's evaluation of CPC's proposal was based in part on an onsite visit to the facilities of Landmark Communications, which is not the offeror.

After receiving the agency report, MNV added two further protest grounds related to the application of the RFP's evaluation criteria: first, MNV contends that CPC's proposal should have been rejected for failure to comply with the RFP's allegedly mandatory requirement that the newspaper be published in oversize tabloid size; and second, MNV argues that the Navy applied unstated evaluation criteria in downgrading MNV's proposal due to MNV's alleged publication of an excessive number of used-car advertisements in the past, and in upgrading CPC's proposal for offering to provide Infoline, an automated telephone information service.

The fact that this procurement involves no appropriated funds affects the standard of review applied to the protest. The nonuse of such funds does not take the procurement outside the bid protest jurisdiction of our Office, because the protest challenges a federal agency's proposed contract for services. Gino Morena Enters., 66 Comp. Gen. 231 (1987), 87-1 CPD ¶ 121. However, the basic acquisition statutes, whose specific provisions generally establish the legal standards against which we evaluate the propriety of procurement actions by defense agencies, do not apply here, because those statutes are limited to procurements for which payment is to be made from appropriated funds. Id. Rather than determining whether the agency complied with those

statutory provisions, we review the actions taken by the agency in procurements not involving appropriated funds to determine whether those actions were reasonable. Id.

Our Office is able to assess the reasonableness of an agency's source selection process only where adequate documentation of that process exists. KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447. Without such documentation, we cannot be certain that the agency action was not arbitrary.

In this case, we find that the contemporaneous record is sufficient to demonstrate that the Navy acted reasonably. Notwithstanding the agency's negative reply to MNV's FOIA request, the record contains briefing sheets which explain and support the agency's conclusion that CPC's proposal was the most advantageous to the government. Those sheets, which are consistent with the numerical scores assigned the proposals, detail the specific strengths and weaknesses of CPC's and MNV's proposals. For example, the briefing sheets contain the following reference to CPC's proposed use of color: "A lot more color than anybody else . . . only 16 out of 64 pages would be black only." Review of the briefing sheets also indicates that CPC proposed use of higher quality paper stock as well as a greater variety of fonts than MNV. As noted above, the briefing sheets and the numerical scores closely tracked the RFP's evaluation criteria. In sum, they provide detailed documentary support for the reasonableness of the Navy's decision to award to CPC.

We find without merit MNV's contention that the agency acted improperly in conducting a site visit to Landmark Communications as part of the evaluation of CPC's proposal. Landmark is the corporate parent of CPC, and CPC's proposal expressly provides that the corporate resources of Landmark will be available in support of CPC's performance. MNV has failed to point to any substantive basis for its challenge to the agency's inspection of Landmark's facilities, and, under the circumstances, we find nothing improper in the agency's taking those resources into account. See Unison Transformer Servs., Inc., 68 Comp. Gen. 74 (1988), 88-2 CPD ¶ 471.

MNV's argument that CPC's proposal fails to satisfy a mandatory RFP requirement turns on the meaning of the term "format" in the language quoted above from section III(F) of the RFP. CPC proposed to publish the newspaper in a full-size broadsheet arrangement rather than the smaller tabloid size identified in the RFP. Since the RFP explicitly states that "[o]ther formats will be considered," MNV is left to argue that the words "other formats" here refer only to other column widths (the subject of the

immediately preceding sentence in section III(F)), rather than more generally to dimensions of either columns or pages (the subject of the paragraph as a whole). MNV bases its argument on its contention that, in the publishing industry, "format" refers only to column width, and has submitted excerpts from industry publications which it asserts support that argument.

In fact, the very materials that MNV has provided to our Office employ the term "format" to refer to page size as well as column width. Thus, the glossary from one of those publications defines "tabloid" as "a newspaper format." Having proffered these publications as authoritative, MNV cannot plausibly dispute that the term "format," as used in the publishing industry, may refer to the dimensions of either pages or columns. Accordingly, the agency and CPC acted consistently with industry usage by interpreting the RFP to permit submission of newspaper formats other than the tabloid format identified in the RFP; conversely, MNV's argument that the RFP allowed differing column sizes, but not page sizes, is unreasonable.¹

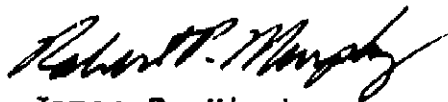
With respect to the allegation that the Navy applied unstated evaluation criteria in rating proposals, we note that the record provides no evidence supporting MNV's contention that its proposal was downgraded due to the company's allegedly extensive reliance on used car advertising in the past. No negative comment appears in the written documentation of the evaluation, and the agency has indicated that no mention of the matter was made during the meeting of the selection group with the source selection official.

Although the record does include positive comments concerning CPC's proposed use of an electronic "Infoline," these comments do not provide a basis to sustain MNV's protest. There is no evidence that the proposed use of an Infoline played a significant role in the source selection decision. As explained above, the briefing sheets document a number of areas where the agency found CPC's proposal superior to MNV's. Even if the few references to Infoline were deleted, the record would clearly support award to CPC,

¹We note that MNV has not argued that it was prejudiced by the agency's position allowing offerors to propose differing page sizes. Thus, MNV has not alleged that it would have changed the page size used in its proposal if it had realized that alternative page sizes would be considered.

and the agency has confirmed that deletion of that service from CPC's proposal would have had no impact on the source selection decision.

The protest is denied.


James F. Hinchman
General Counsel